Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 303*

129th General Assembly
(As Rereported by S. Rules and Reference)

Reps. Schuring, Carney, Gonzales, Fende, Antonio, Barnes, Garland, Hackett, Yuko, R. Adams, Anielski, Bubp, Celeste, Damschroder, Gardner, Grossman, R. Hagan, Heard, Hill, Hottinger, Johnson, Letson, Lynch, Mallory, McClain, Milkovich, Newbold, O'Brien, Okey, Pillich, Ramos, Reece, Sears, Stebelton, Stinziano, Wachtmann, Batchelder

BILL SUMMARY

Ohio Board of Nursing

- Modifies laws administered by the Ohio Board of Nursing, including laws governing Board procedures and the professionals the Board regulates: nurses, dialysis technicians, dialysis technician interns, medication aides, and certified community health workers.

- Makes technical and conforming changes to other statutes to reflect changes the bill makes to laws administered by the Nursing Board.

Pediatric respite care programs

- Requires the Ohio Department of Health to regulate pediatric respite care programs, which are programs that provide services to patients under age 27 who have been diagnosed before age 18 with life-threatening diseases or conditions that shorten life expectancy.

- Establishes a licensing process for pediatric respite care programs that is similar to the Department's existing licensure process for hospice care programs.

- Names the licensing provisions as "Sarah's Law."

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* This analysis was prepared before the report of the Senate Rules and Reference Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

Methadone treatment programs

- Modifies licensure requirements for methadone treatment programs to specify that treatment cannot be maintained within a 500-foot radius of a public or private school, licensed day-care center, or other child-serving agency.

- Relative to license applications pending on the date the 500-foot proximity requirement takes effect, requires the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to apply the requirement when determining whether to issue the license.

- Permits ODADAS to waive the proximity requirement if it receives, from each public or private school, licensed day-care center, or other child-serving agency within a 500-foot radius of the entity, a letter of support for the location that is satisfactory to ODADAS.

- Prohibits ODADAS from considering the proximity requirement when determining whether to renew, withdraw, or revoke a license issued before the effective date of the requirement.

Dietitian professional associations

- Replaces references to the American Dietetic Association and Ohio Dietetic Association with references to the Academy of Nutrition and Dietetics and Ohio Academy of Nutrition and Dietetics, respectively, to reflect recent changes in the names of these professional organizations.

- Recognizes successor organizations of the national and state professional organizations described above.

Nursing facility Medicaid rates

- Continues a 5.08% increase to nursing facilities' costs per case-mix units and rates for ancillary and support costs, tax costs, and capital costs until the Office of Medical Assistance first redetermines such costs and rates in a rebasing process.

- Provides for the Medicaid payment rate for nursing facility services provided to low resource utilization residents to continue to be $130 per Medicaid day.

- Requires a managed care organization (MCO) to pay a skilled nursing facility the current Medicare fee-for-service rate for skilled nursing facility services provided to an individual who is eligible for Medicare and Medicaid (a dual eligible individual) and participating in the Integrated Care Delivery System (ICDS) if (1) the MCO is responsible for the payment under a contract that the MCO, Medical Assistance

Director, and United States Secretary of Health and Human Services jointly enter into under the ICDS, (2) the U.S. Secretary agrees to the payment rate as part of the contract, (3) the MCO receives a federal capitation payment that is an actuarially sufficient amount for the costs that the MCO incurs in paying the rate, (4) no state funds are used for any part of the costs that the MCO incurs in paying the rate, and (5) the ICDS provides for dual eligible individuals to receive the services as part of the ICDS.

ICF/IID resident assessments

- Permits the Ohio Department of Developmental Disabilities to conduct or contract with another entity to conduct, for the first quarter of calendar year 2013, assessments of all residents of each intermediate care facility for individuals with intellectual disabilities (ICF/IID).

- Provides for the resident assessments to be used in determining ICFs/IID's case-mix scores for the first quarter of calendar year 2013.

Volunteer behavioral health care professionals' immunity from liability

- Expands the list of persons who receive qualified immunity from civil liability for providing health care services on a volunteer basis, subject to certain limitations, to include professional clinical counselors, professional counselors, independent social workers, social workers, independent marriage and family therapists, marriage and family therapists, psychologists, independent chemical dependency counselors, chemical dependency counselors III, chemical dependency counselors II, and chemical dependency counselors I.

Emergency clause and delayed effective dates

- Declares an emergency, but applies the resulting immediate effective date only to the bill's provisions that pertain to methadone treatment programs, instruction on schedule II controlled substances for certain advanced practice registered nurses seeking a certificate to prescribe, and assessments of residents of intermediate care facilities for individuals with intellectual disabilities (ICFs/IID).

- Specifies that all other provisions except for the provisions pertaining to nursing facilities' Medicaid rates take effect 90 days after the bill's effective date.

- Specifies that the bill's provisions pertaining to nursing facilities' Medicaid rates take effect July 1, 2013.

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CONTENT AND OPERATION

OVERVIEW

The bill does all of the following:

(1) Modifies laws administered by the Ohio Board of Nursing. These laws include provisions governing the professionals regulated by the Board: nurses, dialysis technicians and dialysis technician interns, medication aides, and community health workers. They also include provisions governing Board procedures. The latter category includes provisions pertaining to disciplinary actions, criminal records checks, and the Board's chemical dependency monitoring program.

(2) Requires the Ohio Department of Health to regulate pediatric respite care programs (which are programs that provide services to patients under age 27 who have

been diagnosed before age 18 with life-threatening diseases or conditions that shorten life expectancy) in a manner similar to the regulation of hospice care programs.

(3) Modifies licensure requirements for methadone treatment programs to generally specify that treatment cannot be maintained within a 500-foot radius of a public or private school, licensed day-care center, or other child-serving agency.

(4) Replaces references to the American Dietetic Association and Ohio Dietetic Association with references to the Academy of Nutrition and Dietetics and Ohio Academy of Nutrition and Dietetics, respectively, to reflect recent changes in the names of these professional organizations.

(5) Modifies the law governing nursing facilities' Medicaid payment rates.

(6) Specifies the minimum amount that a managed care organization must pay for skilled nursing facility services under the Integrated Care Delivery System.

(7) Permits the Ohio Department of Developmental Disabilities to assess the residents of intermediate care facilities for individuals with intellectual disabilities for the first quarter of calendar year 2013.

(8) Expands the list of persons who receive qualified immunity from civil liability for providing healthcare services on a volunteer basis under certain conditions to include specified behavioral health professionals.

OHIO BOARD OF NURSING

Nurses

Licensure pathways

A person may attain licensure to practice as a registered nurse or licensed practical nurse by pursuing one of two pathways: "licensure by examination" or "licensure by endorsement." The latter pathway permits a person already licensed as a nurse in at least one other jurisdiction to gain Ohio licensure based on the out-of-state licensure, without having to pass the examination the Board requires of other applicants.

Both pathways to licensure require an applicant to undergo a criminal records check, and the applicant cannot have been convicted of, or pleaded guilty to, certain serious crimes. This is the standard under current law and the bill does not change this standard. The bill, however, consolidates the criminal records check requirement applicable to nurses with the same requirement applicable to the other professionals the

Board regulates: dialysis technicians, medication aides, and community health workers (see "**Provisions applicable to all license and certificate holders**," below).

The bill also modifies, or specifies additional, requirements an applicant for nursing licensure must meet to attain licensure. These are discussed below.

Licensure by examination – educational component; sex offender status

The bill modifies the educational component of the requirements an applicant for nursing licensure by examination must meet.[1] It also requires the Nursing Board to determine that the applicant is not required to register under Ohio,[2] other states', foreign, or federal laws governing reporting by sex offenders.[3]

Relative to the educational component of the requirements, current law requires a nursing licensure applicant to submit evidence to the Nursing Board that the applicant has completed requirements of a nursing education program approved by the Board or requirements of a nursing education program approved by another jurisdiction's board that regulates nurse licensure. The bill eliminates the reference to the "requirements of" a nursing program approved by the Nursing Board or out-of-state board and instead requires the applicant to "complete a nursing education program" approved by the Board or by a board that is a member of the National Council of State Boards of Nursing.[4]

Licensure by endorsement – out-of-state licensure component; sex offender status; continuing education

The bill modifies the out-of-state licensure component of the requirements an applicant for nursing licensure by endorsement must meet. It also requires the Nursing Board to determine that the applicant is not required to register under Ohio,[5] other states', foreign, or federal laws governing reporting by sex offenders and that the applicant has completed two contact hours of continuing education directly related to Ohio law governing nurses.[6]

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[1] R.C. 4723.09(A)(1).

[2] R.C. Chapter 2950.

[3] R.C. 4723.09(A)(2)(d).

[4] R.C. 4723.09(A)(1).

[5] R.C. Chapter 2950.

[6] R.C. 4723.09(B)(2)(c) and (f).

Relative to the out-of-state licensure component, current law requires an applicant for nursing licensure by endorsement to hold a license in good standing issued by an out-of-state nursing board that was granted after the applicant passed an examination approved by that board. The examination requirements had to be equivalent to Ohio's examination requirements. The bill instead requires that the applicant's license from the other jurisdiction be a "current, valid, and unrestricted license" (as opposed to a "license in good standing"). The bill also requires the application to include any other information required by rules of the Board.[7] (Applicants for licensure by examination are currently subject to a similar requirement.[8])

Temporary permits for endorsement applicants

The bill permits the Nursing Board to grant a nonrenewable temporary permit to practice nursing as a registered nurse or licensed practical nurse to an applicant if the Board is satisfied that the applicant holds a *current, valid, and unrestricted license* to practice as a registered nurse or licensed practical nurse in at least one other jurisdiction. The temporary permit authorizes practice for a period of time not exceeding 180 days. Under current law, the applicant must hold a *current, active license in good standing* in at least one other jurisdiction.[9]

In addition, the bill does not substantively change the provision in current law that requires the Board to terminate a temporary permit if the holder has a disqualifying criminal records check, but expresses the provision in different terms. Under current law, a nurse's temporary permit must terminate automatically if the nurse's criminal records check demonstrates a record of disqualifying offenses. The bill maintains this automatic termination provision, but expresses the provision in different terms by referencing the bill's provision[10] that consolidates the grounds for which any applicant for a license or certificate issued by the Board (not just a nurse) is ineligible for licensure or certification based on the results of a criminal records check.[11]

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[7] R.C. 4723.09(B)(1).

[8] R.C. 4723.09(A)(1).

[9] R.C. 4723.09(B).

[10] R.C. 4723.092.

[11] R.C. 4723.09(C).

Licensed practical nurses (LPNs)

Medication administration

Under the bill, a licensed practical nurse (LPN) seeking to be authorized to administer medication must complete a basic course in pharmacology. Under current law, the LPN must complete a course in medication administration approved by the Board.[12]

The basic course in pharmacology that an LPN must complete may be taken either before licensure (as part of the LPN's practical nursing education program) or after licensure. If the LPN chooses to complete the course before licensure, the course must be offered within a practical nurse prelicensure education program approved by the Nursing Board or another state's nursing board. A postlicensure course, on the other hand, must be approved by the Board.[13]

Adult intravenous therapy administration

Course of study; training. The bill eliminates the requirement that the course of study in the safe performance of adult intravenous (IV) therapy that an LPN must take to be authorized to administer medication be taken "within" an approved prelicensure program. The bill specifies that a course approved by another state's nursing board must meet requirements that are substantially similar to the course approval requirements established by the Ohio Nursing Board (see "**Course approvals**," below).[14]

Relative to the current law requirement that an LPN complete a minimum of 40 hours of training to be authorized to administer adult IV therapy, the bill specifies that the training must include the curriculum established by the Board in rules, rather than limiting the curriculum to the rules that were in effect on January 1, 1999.[15]

Elimination of certain prohibitions. The bill eliminates two prohibitions associated with an LPN's authority to administer IV therapy to adults. These are: (1) a prohibition on aspirating any IV line to maintain patency, and (2) a general prohibition on initiating or maintaining an IV piggyback infusion.[16] The bill replaces the second

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[12] R.C. 4723.01(F)(3).

[13] R.C. 4723.17.

[14] R.C. 4723.18(A)(3).

[15] R.C. 4723.18(A)(4)(a).

[16] R.C. 4723.18(D)(6)(b), (D)(7), and (D)(8).

prohibition with a prohibition on initiating or maintaining an IV infusion containing an antibiotic additive. Therefore, under the bill, an LPN is authorized to aspirate any IV line on an adult to maintain patency and initiate or maintain an IV piggyback infusion on an adult.

Dialysis care. The bill authorizes an LPN to perform, at the direction of a physician or registered nurse, the intermittent injection of a dose of medication only for the purpose of dialysis care if the dose is authorized by an individual who is authorized to practice in Ohio and is acting within that individual's course of professional practice. Under current law, the LPN is authorized to perform the intermittent injection under similar circumstances only when it is prescribed by a licensed physician.[17]

Wallet cards and registry. The bill eliminates the Nursing Board's duties to (1) issue a wallet card to an LPN authorized to perform IV therapy, and (2) maintain a registry of LPNs who have been authorized to administer adult IV therapy.[18]

Course approvals

The bill requires a person or governmental entity seeking approval to provide a course of study in the safe performance of IV therapy to apply to the Nursing Board in a manner specified by the Board. The Board must approve the applicant if the content of the course of study to be provided includes all of the following: (1) didactic and clinical components, (2) curriculum requirements established in rules the Board is to adopt under the Administrative Procedure Act (R.C. Chapter 119.), and (3) standards that require the nurse to perform a successful demonstration of the IV procedures, including all skills needed to perform them safely.[19]

Advanced practice registered nurses

Title change

The bill changes all references to the term "advanced practice nurse" or initials "A.P.N." to "advanced practice registered nurse" or "A.P.R.N.," respectively, in the law governing nurses and in other Ohio statutes.[20] The bill does not modify the types of

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[17] R.C. 4723.18(E)(5).

[18] R.C. 4723.18(G).

[19] R.C. 4723.19.

[20] R.C. 4723.01(O), with conforming changes in R.C. 2305.113(E)(3) and (16), 2711.22(B)(1) and (2), 3701.92(A), 3701.923(B), 3701.924(B)(1)(i), 3701.925(B)(1) and (2) and (C)(1) and (2), 3701.926(A) and (B), 3701.927, 3701.928, 3701.929(A), 3963.01(P), 4503.44(A)(3) and (6), 4723.03(C)(7), 4723.43, 4723.44(A)(4) and (5) and (C)(3), 4723.487(B), 4723.62(A)(4), 5111.88(A)(18), and 5120.55(A)(6).

nurses who are currently included: certified registered nurse anesthetists, clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners.

Applicants exempt from certain requirements to attain certificate of authority

The bill generally eliminates provisions, now obsolete, under which certain applicants for a certificate of authority to practice as an APRN were not required to earn a certain graduate degree or pass a national certification examination.[21] The applicants to which these now obsolete provisions applied fell into three categories: (1) those seeking authority to practice as a certified registered nurse anesthetist, certified nurse-midwife, or certified nurse practitioner on or before December 31, 2000, (2) those seeking authority to practice as a clinical nurse specialist on or before December 31, 2000, and (3) those seeking authority to practice as a certified nurse practitioner on or before December 31, 2008, who had successfully completed a nurse practitioner certificate program that received funding under, and who was employed by, a public or private non-profit entity receiving funding under Title X of the Public Health Service Act and who complied with every other requirement to obtain the certificate of authority except for the requirement to obtain a graduate degree with a major in a nursing specialty or related field.

While the bill eliminates the obsolete provisions governing how these three categories of nurses could attain a certificate of authority through meeting alternative requirements, the bill maintains a requirement in current law that nurses in the second category complete special continuing education requirements established by the Board in rules as a condition of renewing their certificates of authority.[22]

Former pilot program APRNs

The bill eliminates provisions pertaining to the prescriptive authority of APRNs who participated in three pilot programs operating in medically underserved areas that terminated at the end of 2003.[23] Under Am Sub. H.B. 241 of the 123rd General Assembly, the pilot program participants were able to receive authority to prescribe in any area of Ohio without having to complete an additional pharmacology program or externship if they had, as of May 17, 2000, prescriptive authority for purposes of the pilot program.

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[21] R.C. 4723.41(B), (C), (D), and (E), with conforming changes in R.C. 4723.42 and 4723.483.

[22] R.C. 4723.42(B)(4).

[23] R.C. 4723.48(B) and 4723.482(A)(2).

Collaborating physicians

The bill requires a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner to submit to the Nursing Board the name and business address of each of the nurse's collaborating physicians or podiatrists. This must be done not later than 30 days after the nurse first engages in the practice of nursing as an APRN. Thereafter, the nurse must give written notice to the Board if the nurse makes a change regarding his or her collaborating physician(s) or podiatrist(s). The notice must be given not later than 30 days after the change takes effect.[24] These provisions replace ones in current law that require a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner to give the Board notice regarding who the nurse's collaborating physician(s) or podiatrist(s) are as part of the nurse's application for a certificate of authority.[25]

Continuing education approvals

Regarding the continuing education an APRN completes for purposes of retaining national certification, the bill establishes conditions on whether it may also be applied toward the continuing education requirements for renewal of the APRN's license as a registered nurse. That is, the bill specifies that the continuing education may be used for both purposes only if the education is obtained through either of the following: (1) a program or course approved by the Nursing Board, or (2) a person the Board has authorized to approve continuing education programs and courses.[26]

National certifying organizations

To obtain an initial certificate of authority under current law, an APRN applicant generally must (1) be a registered nurse, (2) earn a graduate degree with a major in a nursing specialty or in a related field that qualifies the applicant to sit for the certification examination of a national certifying organization associated with the APRN's specialty that is specified in statute or approved by the Nursing Board, and (3) pass the certification examination.[27]

The bill eliminates from statute references to specific national certifying organizations whose certification examinations qualify an applicant for a certificate of

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[24] R.C. 4723.431(A).

[25] R.C. 4723.41(A)(4)(d).

[26] R.C. 4723.24(C)(4).

[27] R.C. 4723.41(A).

authority.[28] According to a Nursing Board representative, some of those organizations either have changed their names or are no longer engaged in certification activities.[29] Thus, under the bill, an APRN applicant generally must qualify to sit for a certification examination of a national certifying organization *approved by the Board* and pass that examination. Current law, unchanged by the bill, requires the Board to publish a list of the approved organizations annually.[30]

Associated with these changes, the bill also does both of the following:

- Requires an out-of-state APRN applying for a certificate of authority from the Board, who obtained certification from a national certifying organization prior to December 31, 2000, and that was *at the time of certification* specified in statute or approved by the Board, to show evidence of having maintained that certification.[31]

- Requires an APRN seeking renewal of a certificate of authority to provide documentation satisfactory to the Board that the APRN has maintained certification in the APRN's nursing specialty from a national certifying organization *approved by the Board* (rather than an organization that was specified in statute or approved by the Board).[32]

Certificate to prescribe requirements

Externship certificate extension

Under law unchanged by the bill, an APRN who is a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may prescribe drugs and therapeutic devices if the APRN has obtained a certificate to prescribe from the Nursing Board. To obtain the certificate, the APRN must, in general, complete an externship. The externship allows the APRN to gain experience prescribing drugs and therapeutic devices while supervised by a physician.[33]

Before an APRN may begin participating in an externship, the APRN must generally obtain an externship certificate from the Board. Under law unchanged by the

[28] R.C. 4723.41(A)(2) and (3).

[29] Telephone interview with Ohio Board of Nursing (December 20, 2011).

[30] R.C. 4723.46(B).

[31] R.C. 4723.41(B)(2)(a) and (B)(2)(b)(ii).

[32] R.C. 4723.42(B)(2).

[33] R.C. 4723.48(A).

bill, an externship certificate is valid for up to one year. The Board may, however, grant an extension for an additional year under current law if the APRN shows the Board evidence of continued participation in an externship.[34]

Externship exemptions for out-of-state or federally employed APRNs

Am. Sub. S.B. 89 of the 128th General Assembly established an exemption from the externship requirement for APRNs with prescriptive authority in at least one other jurisdiction or who were employed by the U.S. government. To qualify for the exemption, the APRN must, among other things, submit to the Nursing Board documentation from a licensed physician (in a form acceptable to the Board) demonstrating that the APRN's prescribing component of his or her practice was overseen or supervised by (1) a licensed physician in the other jurisdiction, or (2) a licensed physician employed by the U.S. government, as applicable.[35] The bill eliminates this requirement.

Instruction on schedule II controlled substances for certain applicants

The bill authorizes the Nursing Board to accept an alternative form of instruction on schedule II controlled substances from certain applicants for a certificate to prescribe.[36]

Under current law, an APRN seeking prescriptive authority must complete a course of study in advanced pharmacology and related topics consisting of at least 45 contact hours of planned classroom and clinical instruction.[37] The course of study must include, among other things, instruction on schedule II controlled substances.[38]

The bill specifies that the Nursing Board may accept instruction completed in a form other than that described above, including instruction obtained through an Internet-based program, as fulfillment of the schedule II controlled substances instruction component. The bill specifies that this exception to the schedule II controlled substances instruction requirement applies only to applicants for a certificate to prescribe who completed the course of study in advanced pharmacology and related topics before the bill's effective date. In addition, the bill specifies that the instruction obtained in the other form must meet all other standards established in rules adopted

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[34] R.C. 4723.485(A).

[35] R.C. 4723.482(C) and (D); conforming change in R.C. 4723.01(K).

[36] Section 10.

[37] R.C. 4723.482(B)(2).

[38] R.C. 4723.482(B)(5)(d).

by the Board regarding the required instruction specific to schedule II controlled substances. Further, the exception does not alter the current law requirement that the course of study be completed not longer than three years before an application for a certificate to prescribe is filed.[39]

Scope of practice – certified nurse practitioners

Subject to certain conditions, the bill extends the scope of practice of certified nurse practitioners to include the provision of services for acute illnesses. The conditions are that the services must be provided in collaboration with one or more physicians or podiatrists and be consistent with the nurse's education and certification and rules adopted by the Nursing Board.[40]

Under current law, a certified nurse practitioner's scope of practice is described as providing preventive and primary care services and evaluating and promoting patient wellness within the nurse's nursing specialty under the same conditions identified above.[41]

The bill increases the length of the extension period that the Board may grant to an APRN who is continuing to participate in an externship. The extension period may not exceed two years.[42]

Nurse Education Grant Program

The Nursing Board administers the Nurse Education Grant Program under current law. The Program's purpose is to allow the Board to award grants to nurse education programs that have partnerships with other education programs, community health agencies, or health care facilities. The programs that receive grants must use them to fund partnerships with the described entities for the purpose of increasing their enrollment capacities.[43] Money for the grants comes from $10 of each biennial renewal fee the Board assesses for a nursing license.[44] Currently the Program is scheduled to be repealed on December 31, 2013.[45]

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[39] Section 10.

[40] R.C. 4723.43(C).

[41] R.C. 4723.43(C).

[42] R.C. 4723.485(A)(2).

[43] R.C. 4723.063(B).

[44] R.C. 4723.063(D).

[45] Section 3.19 of Am. Sub. H.B. 95 of the 125th General Assembly.

The bill authorizes the Nursing Board to award grants from the Nurse Education Grant Program to nurse education programs that have partnerships with patient centered medical homes.[46] The bill does not specify the meaning of "patient centered medical home"; however, under the laws governing a program administered by the Ohio Department of Health, a "patient centered medical home model of care" is described as an enhanced model of primary care in which care teams attend to the multifaceted needs of patients, providing whole person comprehensive and coordinate patient centered care.[47] In addition, the bill extends the scheduled repeal of the Program from December 31, 2013, to December 31, 2023, thereby extending the period during which the Board may dedicate $10 of each biennial renewal fee to the Program.[48]

Dialysis technicians and dialysis technician interns

Dialysis technician intern certificate

The bill replaces current procedures for issuance of a "temporary certificate to practice as a dialysis technician" with procedures for issuance of a "certificate to practice as a dialysis technician intern" for persons who have not yet passed the dialysis technician examination required under continuing law.

In general, the requirements to obtain an intern certificate are the same as those required under current law to obtain the temporary certificate. The bill, however, makes two substantive changes: (1) each applicant must successfully complete a dialysis training program approved by the Nursing Board, and (2) each applicant must submit the name and address of all dialysis training programs approved by the Board in which the applicant has been enrolled and the dates of enrollment in each program. Under current law, an applicant may be excused from successfully completing the Board-approved dialysis training program if he or she falls under a grandfathering provision for persons employed as dialysis technicians on December 24, 2000, or persons who have experience in a jurisdiction that does not license or certify dialysis technicians but who have successfully completed a training program that is substantially similar to one approved by the Board.[49]

In addition, the bill establishes a period of validity for an intern certificate that differs from the period established by current law for a temporary certificate. Under the bill, an intern certificate is valid for a period of time calculated as follows:

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[46] R.C. 4723.063.

[47] R.C. 3701.921.

[48] Section 3.

[49] R.C. 4723.76(A).

[(18 months from the date the applicant successfully completed a Board-approved dialysis training program) minus (the time the applicant was enrolled in one or more Board-approved dialysis training programs approved by the Board)]

Current law, in contrast, specifies that a temporary certificate is valid for a period of time that is 18 months from the date on which the holder entered a Board-approved dialysis training program.[50]

Dialysis technician interns – scope of practice

The bill generally authorizes a dialysis technician intern to engage in the same activities a dialysis technician may engage in under current law when the care the dialysis technician intern is providing has been delegated by, and is under the supervision of, a physician or registered nurse. These activities are: (1) performing and monitoring dialysis procedures, including initiating, monitoring, and discontinuing dialysis, (2) drawing blood, and (3) administering certain medications as permitted by law when the administration is essential to the dialysis process. Supervision requires that the intern be in the immediate presence of a physician or registered nurse.[51]

Relative to the administration of medication, a dialysis technician intern, like a dialysis technician, may administer medication only when it is ordered by a licensed health professional authorized to prescribe drugs and the administration is done in accordance with the standards for the delegation of dialysis care and rules adopted by the Nursing Board. A dialysis technician intern is restricted to administering the same drugs as dialysis technicians. These drugs are: (1) intradermal lidocaine or other single therapeutically equivalent local anesthetic for the purpose of initiating dialysis treatment, (2) intravenous (IV) heparin or other single therapeutically equivalent anticoagulant for the purpose of initiating and maintaining dialysis treatment, (3) IV normal saline, (4) patient-specific dialysate, to which the intern may add electrolytes but no other additives or medications, and (5) oxygen.[52]

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[50] R.C. 4723.76(B).

[51] R.C. 4723.72(A) and (B).

[52] R.C. 4723.72(C).

Prohibitions

The bill prohibits a dialysis technician intern from doing both of the following: (1) providing dialysis care in a patient's home, and (2) serving as a training or preceptor in a dialysis training program.[53]

Administration of drugs by dialysis technicians

The bill specifies that a dialysis technician (like a dialysis technician intern) is limited to administering the drugs referred to above (see "**Dialysis technician interns – scope of practice**," above) in accordance with standards for the delegation of dialysis care. Current law authorizes the adoption of rules establishing the standards, but it does not specifically address the component of delegation.[54]

Title protection

The bill does not substantively change, but reorganizes the prohibitions on claiming to the public to be, and using certain titles or initials to represent, that the person is a dialysis technician or a person who has fulfilled requirements to become a dialysis technician except for passing the required examination.

Under current law, a person who has not yet passed the dialysis technician examination is a person authorized to perform dialysis care under a temporary certificate. Under the bill, that person is a dialysis technician intern. The bill prohibits a person from claiming to the public to be a dialysis technician intern or using the title, "dialysis technician intern," the initials, "DTI," or any other title or initials unless the person holds a current, valid dialysis technician intern certificate.[55]

Applications for dialysis technician certificate

The bill requires that an application for a certificate to practice as a dialysis technician include the name and address of all approved dialysis training programs in which the applicant has enrolled and the date of enrollment in each program. Currently, an applicant need only submit the required fee with the application.[56]

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[53] R.C. 4723.72(B)(2) and 4723.73(E)(2).

[54] R.C. 4723.72(C) and 4723.79.

[55] R.C. 4723.73(B).

[56] R.C. 4723.75(A).

Qualifications for dialysis technician certificate

Applicants who have completed Board-approved training program

Continuing law requires an applicant for a dialysis technician who has completed a dialysis training program approved by the Nursing Board to (1) demonstrate a certain level of experience in providing dialysis care, and (2) pass a certification examination before attaining certification.[57]

The bill permits the applicant to satisfy the experience component of the requirements for certification by *performing dialysis care for a dialysis provider* for not less than 12 months *immediately* prior to the date of application. Current law requires the applicant *to be employed to perform dialysis care* for a dialysis provider for not less than 12 months *prior* (rather than immediately prior) to the date of application.[58]

To satisfy the examination component of the requirements, the bill requires the applicant to pass a certification examination demonstrating competence to perform dialysis care not later than 18 months *after successfully completing a dialysis training program* approved by the Board. Under current law, the applicant must pass the certification examination not later than 18 months *after entering a dialysis training program*.[59]

Applicants authorized to perform dialysis care in another state

The bill modifies the requirements that a person authorized to perform dialysis in another state must meet to attain a dialysis technician certificate in Ohio.

Under the bill, an out-of-state applicant must do all of the following to attain a dialysis technician certificate: (1) have a testing organization approved by the Board submit evidence satisfactory to the Board that the applicant passed an examination, in another jurisdiction, that demonstrates the applicant's competence to provide dialysis care, (2) submit evidence to the Board that the applicant has been employed to perform dialysis care in another jurisdiction for not less than 12 months immediately prior to the date of application for the certificate, and (3) submit evidence satisfactory to the Board that the applicant completed at least two hours of education directly related to Ohio's statutes and rules governing dialysis technicians. Under current law, the applicant must submit evidence satisfactory to the Board that the applicant holds a current, valid license, certificate, or other authorization to perform dialysis care issued by another

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[57] R.C. 4723.75(B).

[58] R.C. 4723.75(B)(1).

[59] R.C. 4723.75(B)(2).

state that has standards for dialysis technicians that the Board considers substantially similar to Ohio's requirements.[60]

Applicants who met certain testing requirements as of December 24, 2000

The bill eliminates an obsolete provision that permitted a person who did not complete a Board-approved dialysis training program to attain a dialysis technician certificate if both of the following conditions apply:

(1) The person held, on December 24, 2000, a current, valid certificate from a qualifying testing organization or provides evidence satisfactory to the Board of having passed the examination of a qualifying testing organization not longer than five years prior to December 24, 2000.

(2) The person was employed by a dialysis provider and the employer gave to the Board the information that was required under the Board's rules.[61]

Dialysis registry

The bill eliminates a requirement that the Nursing Board establish a dialysis registry containing information on persons who hold certificates to practice as dialysis technicians, who are enrolled in dialysis training programs, or who hold temporary certificates to practice as dialysis technicians. The bill also eliminates a requirement that the Board adopt rules regarding the registry.[62]

Medication aides

Medication Aide Advisory Council

Am. Sub. H.B. 66 of the 126th General Assembly authorized the Nursing Board to conduct a pilot program on the use of medication aides in 80 nursing homes and 40 residential facilities.[63] The act also created the Medication Aide Advisory Council, a 16-member council required to make recommendations to the Board in establishing and conducting the pilot program and assist the Board in evaluating the program.[64] On February 23, 2009, the Board issued a report of its findings and recommendations, and

[60] R.C. 4723.75(B)(2).

[61] R.C. 4723.75(B)(2).

[62] R.C. 4723.78 and 4723.79(G).

[63] R.C. 4723.63(A).

[64] R.C. 4723.62, 4723.621, and 4723.63(F)(1).

the pilot program ended on March 26, 2009.[65] Since that date, any nursing home or residential care facility in Ohio – not only the pilot program homes and facilities – is permitted to use medication aides.[66]

The bill repeals laws referring to the Medication Aide Advisory Council and all provisions specifying the Council's duties or referring to the pilot program.[67] The bill also repeals references to the date (March 26, 2009) on which all nursing homes or residential care facilities in Ohio were initially permitted to use medication aides.[68]

Exemption from criminal records check

The bill eliminates a provision that exempts from the criminal records check requirement a medication aide certificate applicant who had a records check completed not more than five years prior to the date of application and includes a copy of the certified records check with the application.[69] Under the bill, then, all medication aide certificate applicants are subject to a criminal records check.

Title protection; certification required for employment

The bill prohibits a person from doing any of the following without holding a current, valid certificate as a medication aide: (1) engaging in the administration of medication as a medication aide, (2) representing the person as being certified as a medication aide, or using the title, "medication aide," or (3) using any other title implying that the person is a certified medication aide.[70] A similar prohibition on holding oneself out as a registered nurse or licensed practical nurse exists in current law.[71]

The bill prohibits a person from employing a person not certified as a medication aide to engage in the administration of medication as a medication aide.[72] A similar

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[65] R.C. 4723.63(F); Ohio Board of Nursing, *Medication Aide Pilot Program Report* (last visited June 1, 2012), available at <http://www.nursing.ohio.gov/medicationAides.htm>.

[66] R.C. 4723.64.

[67] R.C. 4723.62 (primary) and 4723.32(H), 4723.621, 4723.63, 4723.64, 4723.67(A), 4723.68(B), and 4723.69(A) and (B).

[68] R.C. 4723.65(A) and 4723.66(A).

[69] R.C. 4723.65(B)(2).

[70] R.C. 4723.653(A).

[71] R.C. 4723.03(A) to (C).

[72] R.C. 4723.653(B).

prohibition exists under current law relative to the employment of persons to practice nursing who are not registered nurses or licensed practical nurses.[73]

Sanctions

For commission of fraud related to application or examination

The bill permits the Nursing Board to revoke a medication aide certificate, or refuse to grant a medication aide certificate to an applicant, if the Board finds that the certificate holder or applicant has committed fraud in passing an examination required by the Board or has committed fraud, misrepresentation, or deception in applying for or securing a license or certificate issued by the Board.[74] The Board has similar authority to impose sanctions for these reasons against a person who holds, or applies for, a nursing license, certificate of authority, or dialysis technician certificate.[75]

Criminal sanctions

The bill establishes criminal penalties to be imposed against a person who violates the prohibitions on practicing as a medication aide without a certificate and employing an uncertified person as a medication aide. The penalties are the same as the penalties that apply under current law to persons licensed as registered nurses and licensed practical nurses:[76]

(1) For practicing without a medication aide certificate, when the certificate has lapsed for failure to renew or by administering medication as a medication aide after the certificate has been classified as inactive – a minor misdemeanor;

(2) For practicing without a medication certificate in other circumstances, or employing an uncertified person as a medication aide – a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense.

Peer support programs

The bill eliminates the Nursing Board's authority to adopt rules to establish standards for approval of peer support programs for medication aides.[77]

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[73] R.C. 4723.03(D).

[74] R.C. 4723.652(A).

[75] R.C. 4723.28(A).

[76] R.C. 4723.99.

[77] R.C. 4723.69(B)(5).

Certified community health workers

Training programs

The bill requires the Nursing Board to consider, *prior to or at the end* of a provisional approval period, whether a community health worker training program meets the Board's standards for approval. Under current law, the Board must consider whether the program meets the standards at the *end* of the provisional period.[78]

The Board is authorized under continuing law to place a program on provisional approval if the program ceases to meet the standards of approval.[79]

Technical change

The bill corrects an incorrect cross-reference to the statute that authorizes the Nursing Board to adopt rules specifying the grounds for which the Board may take disciplinary action against a community health worker.[80]

Provisions applicable to all license and certificate holders

Criminal records checks

The bill consolidates the several sections of existing law that pertain to criminal records checks for individuals applying for a license or certificate issued by the Board or who are under the Board's regulatory jurisdiction.[81] The bill consolidates these laws into two Revised Code sections as follows:

(1) Procedures and responsibilities: This section contains all provisions governing: (a) the procedure any applicant for a license or certificate issued by the Nursing Board must use to secure a check of Bureau of Criminal Identification and Investigation (BCII) and Federal Bureau of Investigation (FBI) records, (b) the responsibilities of BCII in completing a records check, and (c) to whom, and for what purposes, criminal records check results can be made available.[82]

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[78] R.C. 4723.87(C).

[79] R.C. 4723.87(C).

[80] R.C. 4723.84(A)(5).

[81] R.C. 4723.09(A)(2) and (C); 4723.28(N); 4723.65(B); 4723.651(A)(6), 4723.75(A)(4) and (C); 4723.83(B); and 4723.84(A)(4).

[82] R.C. 4723.091.

(2) Records check requirement: This section contains all provisions that require an applicant for a license or certificate issued by the Board to have a criminal records check with results that do not disqualify the applicant.[83]

The following is a summary of the primary criminal records check requirements as consolidated by the bill:

- **Individuals subject to criminal records check** – individuals applying for any of the following: (1) an initial license to practice as a registered nurse or licensed practical nurse, if the applicant entered a prelicensure nursing education program on or after June 1, 2003, (2) a certificate to work as a medication aide, dialysis technician, dialysis technician intern, or certified community health worker, (3) reactivation of a license to practice as a registered nurse or licensed practical nurse that has been inactive for at least five years, (4) reinstatement of a license to practice as a registered nurse or licensed practical nurse that has been expired for at least five years.[84]

- **To whom, and for what purposes, criminal records check results can be made available** – results are not public records and cannot be made available to any person for any purpose other than the following: (1) for use in determining whether the individual who is the subject of the check should be granted a license or certificate or whether a temporary permit has terminated automatically, (2) for use in determining whether the individual who is the subject of the check should have the individual's license or certificate reactivated or reinstated following a period of inactivity or after the license or certificate has expired, (3) for use in determining whether the individual who is the subject of the check should be subject to disciplinary action, or (4) making the results available to the individual who is the subject of the check or that individual's representative.[85]

- **Disqualifying offenses** – an individual is ineligible for any license or certificate the Board issues if the individual's criminal records check indicates that the individual has been convicted of, pleaded guilty to, or had a judicial finding of guilt for any of the following offenses under Ohio law or substantially similar offenses under federal law or the laws of

[83] R.C. 4723.092.

[84] R.C. 4723.091(A).

[85] R.C. 4723.091(D).

another state or country: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary.[86]

Checks requested by the Board

As part of a Nursing Board investigation of an individual's criminal background, the bill authorizes the Board to order an individual to submit, at the individual's expense, to a criminal records check in accordance with the bill's procedures for such requests.[87]

Disciplinary actions

Action based on discipline in another jurisdiction

The bill authorizes the Nursing Board to take disciplinary action against a license or certificate holder for the denial, revocation, suspension, or restriction of authority to engage in *any* licensed profession (for any reason other than failure to renew) in Ohio or another state or jurisdiction.[88] Under current law, the Board is authorized to take disciplinary action based on another jurisdiction's administrative action, but the action must have been associated with the practice of a health care occupation, rather than any licensed profession.[89]

Judicial finding of eligibility for pre-trial diversion or similar program

The bill expands the Nursing Board's authority to impose a disciplinary sanction for any of the following offenses by including situations when a person is found by a judge to be eligible for a pre-trial diversion or similar program:[90]

--A misdemeanor in the course of practice;

--Any felony or crime involving gross immorality or moral turpitude;

--A violation of any municipal, state, county, or federal drug law;

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[86] R.C. 4723.092.

[87] R.C. 4723.28(F).

[88] R.C. 4723.28(B)(1).

[89] R.C. 4723.28(B)(1).

[90] R.C. 4723.28(B)(3) to (7).

--An act in another jurisdiction that would constitute a felony or a crime of moral turpitude in Ohio;

--An act in the course of practice in another jurisdiction that would constitute a misdemeanor in Ohio.

Under current law, the Board is authorized to impose a sanction relative to these offenses only when (1) the person has been convicted of the offense, (2) the person has pleaded guilty to the offense, (3) there has been a judicial finding of the person's guilt resulting from a plea of no contest to the offense, or (4) there has been a judicial finding of the person's eligibility for intervention in lieu of conviction for the offense.

The disciplinary sanctions the Board is authorized to impose under law unchanged by the bill are (1) denying, revoking, suspending, or placing restrictions on any nursing license, certificate of authority, or dialysis technician certificate, (2) reprimanding or otherwise disciplining a holder of a nursing license, certificate of authority, or dialysis technician certificate, or (3) imposing a fine of not more than $500 per violation.[91]

Impairment from substance use

The bill recharacterizes, but does not substantively change, the Nursing Board's authority to impose a disciplinary sanction on a nurse for the nurse's substance abuse. The bill also extends to the Board the authority to discipline dialysis technicians for substance abuse issues.

Specifically, the bill permits the Board to impose a disciplinary sanction on the basis of the nurse's or technician's *habitual or excessive use of* controlled substances, other habit-forming drugs, or alcohol or other chemical substances to an extent that impairs the individual's ability to provide *safe nursing or dialysis care*. Current law authorizes the Board to impose a disciplinary sanction only in the case of a nurse who abuses substances, and requires the Board to find that the nurse "habitually indulges" in alcohol, habit-forming drugs, controlled substances, or chemical substances to the extent that it impairs the nurse's *ability to practice*.[92]

The bill also permits the Board to impose a disciplinary sanction on a nurse or dialysis technician based on the nurse's or technician's impairment of the ability to practice according to acceptable and prevailing standards of safe nursing or dialysis

[91] R.C. 4723.28(B).

[92] R.C. 4723.28(B)(9).

care because of the use of (rather than the habitual or excessive use of) drugs, alcohol, or other chemical substances.[93]

Impairment from physical or mental disability

The bill authorizes the Nursing Board to discipline a dialysis technician for impairment of the ability to practice according to acceptable and prevailing standards of safe dialysis care because of physical or mental disability. This is similar to the Board's current authority to impose a sanction on a nurse for impairment of the ability to practice because of such an impairment.[94]

Misappropriation in the course of practice

The bill eliminates a provision authorizing the Nursing Board to impose a disciplinary sanction on a license or certificate holder for obtaining or attempting to obtain by intentional misrepresentation or material deception money or anything of value in the course of practice. It replaces this provision with a provision that authorizes the Nursing Board to impose a disciplinary sanction for misappropriation or attempted misappropriation of money or anything of value in the course of practice.[95]

Alternative sanctions – for fraud in passing examination

The bill permits the Nursing Board to impose the following sanctions if it finds that a person committed fraud in passing an examination required to obtain a license, certificate of authority, or dialysis technician certificate: suspend; place restrictions on the license, certificate of authority, or dialysis technician certificate; reprimand or otherwise discipline the license or certificate holder; or impose a fine of not more than $500 per violation.[96] Sanctions under current law for such fraud are limited to revocation of or refusal to grant the license or certificate.

Sealing of records

The bill specifies that the sealing of records of any of the following has no effect on a Board disciplinary action or sanction: a guilty plea, judicial finding of guilt resulting from a plea of no contest, or a judicial finding of eligibility for a pre-trial diversion program or intervention in lieu of conviction. This is an extension of a

[93] R.C. 4723.28(B)(10).

[94] R.C. 4723.28(B)(11).

[95] R.C. 4723.28(B)(13).

[96] R.C. 4723.28(A).

provision in current law specifying that the sealing of records of a criminal conviction does not affect a Board disciplinary action or sanction.[97]

Confidentiality and release of investigatory records

The bill specifies that information the Nursing Board receives pursuant to a complaint is confidential and not subject to discovery in any civil action. This is an extension of a similar provision in current law that applies to information received pursuant to an investigation.[98]

The bill also permits the Board to disclose to law enforcement officers and government entities, for purposes of an investigation of a license or certificate holder, otherwise confidential information the Board receives or maintains with respect to the monitoring of an individual as part of or following a disciplinary action.[99]

Duty to report misconduct

Employers

The bill requires that certain information regarding misconduct be reported to the Board by every person or governmental entity that either employs or contracts directly or through another person or governmental entity for the provision of services by registered nurses, licensed practical nurses, dialysis technicians, medication aides, or certified community health workers. The information that must be reported is the name of any current or former employee or person under a contract who the person or governmental entity knows has engaged in conduct that would be grounds for the Board to take disciplinary action. The report must be made on the person's or governmental entity's behalf by an individual licensed by the Board who the person or governmental entity has designated to make such reports.[100]

This provision of the bill replaces one in current law that requires *every employer* to report the information for a person *who has* engaged in conduct that would be grounds for disciplinary action. Also, current law does not specify that a person licensed by the Board must make the report on an employer's behalf.

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[97] R.C. 4723.28(E).

[98] R.C. 4723.28(I)(1).

[99] R.C. 4723.28(I)(4).

[100] R.C. 4723.34(A)(1).

Associations

The bill eliminates a requirement that certain professional associations report to the Nursing Board the name of any registered nurse, licensed practical nurse, dialysis technician, community health worker, or medication aide who has been investigated and found to constitute a danger to the public health, safety, and welfare because of conduct that would be grounds for disciplinary action by the Board.[101]

Chemical dependency monitoring program

Role of supervising member – eligibility and temporary suspension determinations

The bill requires the Nursing Board's member who serves as the supervising member for disciplinary matters to make determinations regarding an individual's eligibility for admission to, continued participation in, and successful completion of the Board's existing chemical dependency monitoring program.[102] The bill also specifies that the supervising member for disciplinary matters is the person who determines that a program participant is capable of resuming practice following program participation. Under current law, the program coordinator makes this determination.[103] Further, the bill makes the supervising member solely responsible for determining whether to temporarily suspend a participant's license or certificate when the program coordinator determines the participant is significantly out of compliance with the terms and conditions for participation. The bill transfers to the Board (from the program coordinator) the responsibility to notify the participant of the suspension by certified mail.[104]

Records retention schedule

The bill reduces to two (from five) the number of years that all records relating to a participant's participation in the chemical dependency monitoring program must be maintained.

Waiver regarding release of information; disclosure regarding participant's progress

The bill requires an applicant for the chemical dependency monitoring program to sign a waiver permitting the Nursing Board to receive and release information

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[101] R.C. 4723.34(A)(2).

[102] R.C. 4723.35(C).

[103] R.C. 4723.35(E)(1).

[104] R.C. 4723.35(E)(2).

necessary to determine whether the applicant is eligible for the program. After being admitted to the program, the bill requires the participant to sign another waiver permitting the Board to receive and release information necessary to determine whether the individual is eligible for continued participation. Under current law, the program coordinator, not the Board, is the party that is permitted to receive and release the necessary information.[105]

Disclosure of information; qualified immunity from civil liability

The bill permits the Nursing Board to disclose information regarding a participant's progress in the chemical dependency monitoring program to any person or government entity that the participant authorizes in writing to be given the information. When releasing the information, however, the Board is prohibited from including any information that is protected under state law governing the confidentiality of alcohol and drug treatment records[106] or federal or state statutes or regulations that provide for the confidentiality of medical, mental health, or substance abuse records. Under current law, the program coordinator, not the Board, is authorized to disclose the participant's information and is the party subject to the prohibition on the release of certain information.[107]

The bill extends qualified civil immunity to the Nursing Board's individual members in connection with any civil action filed as a result of an alleged improper disclosure of the records described above. Specifically, the bill provides that each individual Board member is not liable for damages in any civil action as a result of disclosing the information unless the member engages in fraud or acts in bad faith. The bill also eliminates a provision that specifically provides qualified civil immunity to the Board's chemical dependency program coordinator, although the program coordinator has qualified immunity under an existing provision that extends such immunity to the Board as a whole and its employees and representatives.[108]

License and certificate renewal

Military duty

The bill exempts persons engaged in military service from a provision that states that failure to receive a renewal application from the Nursing Board does not excuse a

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[105] R.C. 4723.35(F)(2).

[106] R.C. 3793.13.

[107] R.C. 4723.35(F)(4).

[108] R.C. 4723.35(G).

person from the requirement to renew the license or certificate.[109] Under existing law, modified in part by the bill, the Board must provide an application for renewal to every holder of an active license or certificate, except when the Board is aware that the individual is ineligible for renewal.[110]

The bill also specifies that the holder of an inactive license who did not renew a license because of military service is (1) permitted to renew the license as provided in the law governing renewal of licenses for persons engaged in military service,[111] and (2) exempt from the $100 fee the Board charges for license reinstatements.[112]

Submission of renewal application

The bill requires a license or certificate holder, after completing an application for renewal of a license or certificate issued by the Nursing Board, to return it to the Board with the renewal fee. Under current law, the license or certificate holder must return the form and fee to the Treasurer of State.[113]

Replacements of frameable wall certificates

The bill requires the Nursing Board, on the request of a holder of a nursing license, certificate of authority, dialysis technician certificate, medication aide certificate, or community health worker certificate, to provide to the requestor a replacement copy of a wall certificate suitable for framing if the requestor presents proper identification and pays a $25 fee. Current law requires the Board to provide a replacement copy of a *license or certificate* on the requestor's payment of a $25 fee.[114]

Board procedures

Approval of prelicensure nursing education programs

Among several duties, the Nursing Board is required to survey, inspect, and approve prelicensure nursing education programs. The bill specifies that the Board's authority to do so extends only to programs located in Ohio. The bill also expressly

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[109] R.C. 4723.24(A).

[110] R.C. 4723.24(A).

[111] R.C. 5903.10.

[112] R.C. 4723.24(D)(2) and 4723.08(A)(18).

[113] R.C. 4723.24(A).

[114] R.C. 4723.271(A) and 4723.08(A)(8).

permits the Board to survey, inspect, and approve master's degree programs that lead to initial licensure to practice nursing.[115]

Approval denied for submitting false, misleading, or deceptive information

The bill requires the Nursing Board to deny approval of a new education or training program if an applicant for approval has submitted or caused to be submitted false, misleading, or deceptive statements, information, or documentation to the Board. If the Board proposes to deny approval of a program, it must do so pursuant to an adjudication conducted under the Administrative Procedure Act.[116]

Dialysis training programs – provisional approvals

The bill permits the Nursing Board to place on provisional approval, for a period of time it specifies, a dialysis training program that has ceased to meet and maintain the minimum standards established by the Board in rules for such programs. Prior to or at the end of the provisional period, the Board is required to reconsider whether the program meets the standards for full approval. If it does not, the Board is permitted to withdraw approval pursuant to an action that conforms with the Administrative Procedure Act.[117] Currently, the Board has similar authority with respect to nursing and community health worker education programs that have ceased to meet and maintain minimal standards established in rules.[118]

Continuing education course approvals

The bill requires the Nursing Board to approve continuing education programs and courses for all professions the Board regulates, not solely programs and courses for nurses. The programs and courses must be approved under standards established in rules the Board is to adopt.[119]

Certification by endorsement – dialysis technicians and community health workers

The bill eliminates the Nursing Board's authority to adopt rules establishing criteria for evaluating the qualifications of an applicant to become a dialysis technician

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[115] R.C. 4723.06(A)(5).

[116] R.C. 4723.06(A)(19).

[117] R.C. 4723.74(B).

[118] R.C. 4723.06(A)(7) and 4723.87(C).

[119] R.C. 4723.06(A)(8).

or community health worker in Ohio by endorsement of another state's certification (rather than by meeting Ohio's requirement for certification).[120]

Public inspection of records

The bill makes the following changes regarding requirements the Nursing Board must fulfill regarding public records:

- Requires the Board to maintain and have open for public inspection a record of all applicants for, and holders of, licenses and certificates issued by the Board and requires the record to be maintained in a format determined by the Board. Currently, the Board must maintain and have open for public inspection a file (maintained in a manner prescribed by rule) of only holders of nursing licenses, registrations, and certificates granted by the Board.[121]

- Requires the Board to maintain and have open for public inspection a list of education or training programs approved by the Board. Currently, the Board must do so only with respect to prelicensure nursing education programs.[122]

- Repeals a requirement that the Board maintain and have open for public inspection a list of approved peer support programs for nurses, dialysis technicians, and certified community health workers.[123]

License or certificate verification

Verification to other jurisdictions

The bill extends to additional types of certificates issued by the Nursing Board the Board's existing procedures and fee ($15) for providing verification of its licenses and certificates to other jurisdictions. Currently, the Board is authorized to make such verifications only for nursing licenses, certificates of authority to practice as an advanced practice nurse, and dialysis technician certificates. Under the bill, the Board may also verify certificates to prescribe, medication aide certificates, and community health worker certificates.[124]

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[120] R.C. 4723.07(J).

[121] R.C. 4723.06(A)(18)(b).

[122] R.C. 4723.06(B)(18)(c).

[123] R.C. 4723.06(B)(19)(d).

[124] R.C. 4723.08(A)(7) and 4723.271(B).

Verification for other purposes

The bill permits the Board to contract for services pertaining to the process of providing written verification of any license or certificate it issues. Currently, this contracting authority applies only for verification of nursing licenses, certificates of authority to practice as an advanced practice nurse, dialysis technician certificates, and community health worker certificates. Under both current law and the bill, the contracts are for performing verification other than providing verification to another jurisdiction.[125]

Rulemaking authority

Relative to the Nursing Board's authority to adopt rules, the bill does all of the following:

- **Peer support programs** – eliminates a requirement that the Nursing Board approve peer support programs for persons who hold a nursing license, dialysis technician certificate, or community health worker certificate.[126] Associated with this change, the bill also eliminates the Board's authority to adopt rules to establish standards for approval of peer support programs.[127] According to a Board representative, the Board does not engage in review of peer support programs for any persons the Board regulates.

- **Certification by endorsement: dialysis technicians and community health workers** – eliminates the Nursing Board's authority to adopt rules establishing criteria for evaluating the qualifications of an applicant to become a dialysis technician or community health worker in Ohio by endorsement of another state's certification (rather than by meeting Ohio's requirements for certification).[128] According to a Board representative, the Board does not endorse another state's certification of a dialysis technician or community health worker.

- **Standards for continuing education** – requires the Board to adopt rules establishing standards for approval of continuing education programs and courses for medication aides, dialysis technicians, and community

[125] R.C. 4723.08(D).

[126] R.C. 4723.06(A)(9).

[127] R.C. 4723.07(I).

[128] R.C. 4723.07(J).

health workers.[129] The Board currently has the authority to adopt rules only for continuing education programs and courses for nurses.[130]

- **Standards for nursing education programs** – requires the Board to adopt rules that establish *minimum standards* for nursing education programs. Under current law, the Board's rulemaking authority extends to both *minimum curricula and standards*.[131]

- **Requirements for reactivating inactive licenses and certificates** – requires the Board to adopt rules that establish requirements for *reactivating any inactive certificate or license the Board issues*. Under current law, the Board's rulemaking authority refers to a restoration process and extends only to inactive *nursing licenses, dialysis technician certificates, and community worker certificates*.[132]

- **Conditions for reinstatement of licenses and certificates** – requires the Board to adopt rules establishing conditions that may be imposed for reinstatement of *any license or certificate the Board issues*. Under current law, the Board's rulemaking authority extends only to reinstatement of *nursing licenses, dialysis technician certificates, or community worker certificates*.[133]

- **Universal and standard precautions** – requires the Board to adopt rules establishing *universal and standard precautions* that must be used by *each licensee or certificate holder*. Under current law, the Board's rulemaking authority refers to *universal blood and body fluid precautions* and extends only to *nurses and dialysis technicians*.

[129] R.C. 4723.69(B)(6), 4723.79(G), and 4723.88(H).

[130] R.C. 4723.07(E).

[131] R.C. 4723.07(B).

[132] R.C. 4723.07(G).

[133] R.C. 4723.07(H).

Fees

Processing of returned checks

The bill permits the Nursing Board to impose a fee of $25 for processing a check *returned* to the Board for any reason. Currently, the Board may impose a $25 fee only when a check is *noncollectible*.[134]

Renewals, cards, or services no longer provided

The bill repeals references to Nursing Board fees that are obsolete, including fees for certain renewals, cards, or services that either are no longer provided by the Board or are inapplicable under the bill.[135]

PEDIATRIC RESPITE CARE PROGRAMS

Regulation and licensure

The bill requires the Ohio Department of Health to regulate pediatric respite care programs through a licensing process that is similar to the Department's existing licensure of hospice care programs.[136] The bill specifies that its provisions regarding licensure of pediatric respite care programs are to be known as "Sarah's Law."[137]

As defined by the bill, a pediatric respite care program is a program that provides inpatient respite care and related services only to pediatric respite care patients and pediatric respite care patients' families in order to meet the physical, psychological, social, spiritual, and other special needs that are experienced during or leading up to the final stages of illness, dying, and bereavement. All of the following services may be provided by a pediatric respite care program:

(1) Short-term inpatient care, including both palliative and respite care and procedures;

(2) Nursing care by or under the supervision of a registered nurse;

(3) Physician's services;

(4) Medical social services by a social worker under the direction of a physician;

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[134] R.C. 4723.08(A)(22).

[135] R.C. 4723.08(A)(9), (11), (23), and (24).

[136] R.C. 3712.031(C).

[137] Section 8.

(5) Medical supplies, including drugs and 38iological, and the use of medical appliances;

(6) Counseling for pediatric respite care patients and pediatric respite care patients' families;

(7) Bereavement services for respite care patients' families.[138]

The bill defines "pediatric respite care patient" as a patient who (1) is less than 27 years old, (2) has been diagnosed before age 18 with a life-threatening disease or condition that is expected to shorten the patient's life expectancy, regardless of whether the patient is terminally ill, and (3) has voluntarily requested and is receiving care from a licensed pediatric respite care program.[139] The bill defines "pediatric respite care patient's family" as a patient's family members, including a spouse, brother, sister, child, or parent, and any other relative or individual who has significant personal ties to the patient and who is designated as a member of the patient's family by mutual agreement of the patient, the relative or individual, and the patient's interdisciplinary team.[140] A patient's interdisciplinary team is a working unit composed of professional and lay persons that includes at least a physician, a registered nurse, a social worker, a member of the clergy or a counselor, and a volunteer.[141]

Separate licensure

The bill provides for separate licensure of pediatric respite care programs and hospice care programs. It specifies that the term "pediatric respite care program" does not include a hospice care program, and in a corresponding provision, it specifies that the term "hospice care program" does not include a pediatric respite care program. As a result, neither program is subject to the other program's licensing requirements.[142]

Required components

Under the bill, any person or public agency licensed to provide a pediatric respite care program is required to do all of the following:

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[138] R.C. 3712.01(J).

[139] R.C. 3712.01(K).

[140] R.C. 3712.01(L).

[141] R.C. 3712.01(D).

[142] R.C. 3712.01(A), (B), and (J), 3712.03, and 3712.031.

(1) Provide a planned and continuous pediatric respite care program (the medical components must be under the direction of a physician);

(2) Ensure that care is available 24 hours a day, 7 days a week;

(3) Establish an interdisciplinary plan of care for each pediatric respite care patient and the patient's family that is coordinated by one designated individual who must ensure that all components of the plan of care are addressed and implemented, addresses maintenance of patient-family participation in decision making, and is reviewed by the patient's attending physician and by the patient's interdisciplinary team immediately prior to or on admission to each session of respite care;

(4) Have an interdisciplinary team or teams that provide or supervise the provision of pediatric respite care program services and establish the policies governing the provision of the services;

(5) Maintain central clinical records on all pediatric respite care patients under its care.[143]

Contracting for the provision of components

A provider of a pediatric respite care program may arrange for another person or public agency to furnish one or more of the above components pursuant to a written contract. If the provider contracts with a home health agency for this purpose, the contract for the care must include all of the following terms:

(1) The provider must furnish a copy of the patient's interdisciplinary plan to the home health agency and must specify the care that is to be provided by the home health agency;

(2) The regimen described in the established plan of care must be continued while the patient receives care from the home health agency, subject to the patient's needs, and with approval of the coordinator of the interdisciplinary team;

(3) All care, treatment, and services furnished by the home health agency must be entered into the patient's medical record;

(4) The designated coordinator of the interdisciplinary team must ensure conformance with the established plan of care;

[143] R.C. 3712.061(A).

(5) A copy of the home health agency's medical record and discharge summary must be retained as part of the patient's medical record.[144]

Prohibitions against unlicensed activities

The bill prohibits a person or public agency from doing any of the following without a license:

--Holding itself out as providing a pediatric respite care program;

--Providing a pediatric respite care program;

--Using the term "pediatric respite care program" or any term containing "pediatric respite care" to describe or refer to a health program, facility, or agency.[145]

The Department must petition the court of common pleas of the county in which the prohibited activity is taking place for an order enjoining that person or public agency from conducting those activities without a license. Any person or public agency may request the Department to petition the court, and the Department must do so if it determines that the person or public agency named in the request is violating one or more of the prohibitions described above. The bill gives the court jurisdiction to grant injunctive relief upon a showing that the person or public agency named in the petition is conducting those activities without a license.[146]

A person who violates any of the prohibitions is guilty of a second degree misdemeanor on a first offense, and a first degree misdemeanor on each subsequent offense.[147]

Exemptions

The bill specifies that the prohibitions against unlicensed activities described above do not apply to any of the following:

(1) A member of an interdisciplinary team or an employee of a licensed pediatric respite care program.[148]

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[144] R.C. 3712.061(B).

[145] R.C. 3712.051(A).

[146] R.C. 3712.051(C).

[147] R.C. 3712.99.

[148] R.C. 3712.051(A).

(2) A hospital.

(3) A nursing home or residential care facility.

(4) A home health agency, if it provides services under contract with a licensed pediatric respite care facility.

(5) A regional, state, or national nonprofit organization whose members are providers of pediatric respite care programs, individuals interested in pediatric respite care programs, or both, as long as the organization does not provide or represent that it provides pediatric respite care programs.[149]

(6) A person or government entity certified by the Ohio Department of Developmental Disabilities (ODODD) as a supported living provider. ("Supported living" means services provided for as long as 24 hours a day to an individual with mental retardation or other developmental disability through any public or private resources, including moneys from the individual, that enhance the individual's reputation in community life and advance the individual's quality of life by doing the following: (a) providing the support necessary to enable an individual to live in a residence of the individual's choice, with any number of individuals who are not disabled, or with not more than three individuals with mental retardation and developmental disabilities unless the individuals are related by blood or marriage, (b) encouraging the individual's participation in the community, (c) promoting the individual's rights and autonomy, and (d) assisting the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in the individual's residence.[150])

(7) A residential facility licensed by ODODD. (A "residential facility" is a home or facility in which a mentally retarded or developmentally disabled person resides, except the home of a relative or legal guardian in which a mentally retarded or developmentally disabled person resides, a respite care home certified by a county board of developmental disabilities, a county home or district home, or a dwelling in which the only mentally retarded or developmentally disabled residents are in an independent living arrangement or are being provided supported living.[151])

(8) A respite care home certified by a county board of developmental disabilities. (A "respite care home" is a facility that provides temporary, as opposed to permanent,

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[149] R.C. 3712.051(B).

[150] R.C. 5126.01(U)(1).

[151] R.C. 5123.19(A)(1)(a).

care for persons with mental retardation or developmental disabilities when their regular caretakers need a respite from providing care.[152])

(9) A person providing respite care under a family support services program established by a county board of developmental disabilities. ("Respite care" is appropriate, short-term, temporary care that is provided to a mentally retarded or developmentally disabled person to sustain the family structure or to meet planned or emergency needs of the family.[153])

(10) A person or government entity providing respite care under an ODODD-administered Medicaid waiver.[154]

Licensure process

Every person or public agency that proposes to provide a pediatric respite care program must apply to the Department for a license. An application for a license for a pediatric respite care program consists of both of the following:

(1) Application form – an applicant must provide required information on a form prescribed and provided by the Department.

(2) Fees – an applicant must pay the required license fee established by rules to be adopted by the Director of Health. This fee cannot exceed $600 without Controlling Board approval. The maximum fee approved by the Controlling Board cannot exceed $900.[155]

The Department must grant a license to the applicant if the applicant is in compliance with the statutes and rules governing pediatric respite care programs. A license is valid for three years.[156]

License renewal

A licensed pediatric respite care program may renew its license by applying for renewal in the same manner as applying for initial licensure and providing a license renewal fee established in rules to be adopted by the Director of Health. This renewal

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[152] Telephone interview with Ohio Department of Developmental Disabilities representative (Feb. 6, 2009).

[153] R.C. 5126.11(A).

[154] R.C. 5111.871.

[155] R.C. 3721.031(A)(2).

[156] R.C. 3721.031(C)(1) and 3721.041(A) and (B).

fee cannot exceed $600 without Controlling Board approval. The maximum fee approved by the Controlling Board cannot exceed $900.[157] An application for renewal must be made at least 90 days prior to the expiration of the license. The Department must renew the license if the applicant is in compliance with the statutes and rules governing pediatric respite care programs.[158]

Inspections

The Department is required to make inspections as necessary to determine whether pediatric respite care program facilities and services meet the requirements of the bill and the rules adopted under it.[159] An inspection fee must be established by the Director of Health in those rules. This fee cannot exceed $1,750 without Controlling Board approval. The maximum fee approved by the Controlling Board cannot exceed $2,625.[160]

Disciplinary actions

The Department may suspend or revoke a license of a pediatric respite care program if the license holder made any material misrepresentation in the application for the license or no longer meets the requirements of the bill or the rules adopted under it. The Department must comply with the Administrative Procedure Act (R.C. Chapter 119.) when taking disciplinary actions.[161]

Rulemaking

The Director of Health is required to adopt, and permitted to amend and rescind, rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Provide for licensure of pediatric respite care programs and suspension and revocation of those licenses;

(2) Establish a license fee, license renewal fee, and inspection fee in accordance with the maximum amounts described above;

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[157] R.C. 3721.031(A)(2).

[158] R.C. 3712.041(B).

[159] R.C. 3712.031(C)(2).

[160] R.C. 3712.031(A)(3).

[161] R.C. 3712.031(C)(1) and 3712.041(C).

(3) Establish requirements for pediatric respite care program facilities and services;

(4) Provide for the granting of licenses to persons and public agencies that are accredited or certified to provide pediatric respite care programs by an entity whose standards for accreditation or certification equal or exceed those provided for by the bill and the rules adopted under it;

(5) Establish interpretive guidelines for the rules described above;[162]

(6) Implement criminal background check requirements for applicants for employment with a pediatric respite care program who will be providing direct care to pediatric respite care patients, including the circumstances under which a program may employ a person who has been convicted of or pleaded guilty to specified offenses (such as certain sex and drug offenses) but meets personal character standards set by the Director.[163]

Existing law extended to pediatric respite care programs

The bill otherwise provides for pediatric respite care programs to be subject to the same requirements as hospice care programs. The issues addressed in the laws made applicable to pediatric respite care programs include the following:

--Required criminal background checks for applicants for employment with a pediatric respite care program who will be providing direct care to pediatric respite care patients;[164]

--Permission to request criminal background checks for applicants for employment with a pediatric respite care program who will not be providing direct care to pediatric respite care patients;[165]

--Requirements and responsibilities related to a patient's durable power of attorney for health care;[166]

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[162] R.C. 3712.031(A) and (B).

[163] R.C. 3712.09(F)(2).

[164] R.C. 3712.09.

[165] R.C. 109.57 and Sections 5, 6, 6A, 8, and 9.

[166] R.C. 1337.11.

--Requirements and responsibilities related to a patient's do-not-resuscitate order;[167]

--Provisions holding a pediatric respite care program liable for a physician's failure to obtain informed consent before a medical procedure only if the physician is an employee of the program;[168]

--Prohibitions related to assisted suicide.[169]

The bill also makes a number of changes to conform the licensing system of pediatric respite care programs to the licensing system of hospice care programs.[170]

METHADONE TREATMENT PROGRAMS

Location requirements for licensure

The bill modifies the requirements an alcohol and drug addiction program must meet to be licensed by the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to maintain methadone treatment. Currently, five requirements must be met to obtain licensure of a methadone treatment program.[171] The bill adds a sixth requirement: the treatment cannot be maintained within a 500-foot radius of a public or private school, licensed day-care center, or other child-serving agency.[172]

In the case of a license application pending on the effective date of the bill's proximity requirement, the bill specifies that the proximity requirement described above must be applied by ODADAS in determining whether to issue the license. ODADAS may waive the proximity requirement in accordance with provisions specified by the bill (see "**Waiver**," below).[173]

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[167] R.C. 2133.01.

[168] R.C. 2317.54.

[169] R.C. 3795.01.

[170] R.C. 3701.881, 3721.01, 3963.01, 4719.01, 4752.02, 5119.70, and 5119.71.

[171] R.C. 3793.11(C)(1) to (5).

[172] R.C. 3793.11(C)(6).

[173] Section 9.

In the case of a license issued prior to the effective date of the bill's proximity requirement, the bill prohibits ODADAS from considering the requirement in determining whether to renew, withdraw, or revoke the license.[174]

Waiver

The bill specifies that ODADAS may waive the proximity requirement if it receives, from each public or private school, licensed day-care center, or other child-serving agency that is within the 500-foot radius of the location of the proposed methadone treatment program, a letter of support for the location. ODADAS must determine whether a letter of support is satisfactory for purposes of waiving the requirement.[175]

DIETITIAN PROFESSIONAL ASSOCIATIONS

Association name changes

The bill replaces references in the Revised Code to the American Dietetic Association and Ohio Dietetic Association with references to the Academy of Nutrition and Dietetics and Ohio Academy of Nutrition and Dietetics, respectively, to reflect recent changes in the names of these professional organizations.[176]

The bill also recognizes successor organizations of the national and state professional organization described above.[177]

MEDICAID RATES FOR NURSING FACILITY SERVICES

Medicaid rates for nursing facility services

The bill continues an adjustment that Am. Sub. H.B. 153 (the biennial budget act) made to nursing facilities' Medicaid payment rates for fiscal year 2013 and a rate established for nursing facility services provided to low resource utilization residents during that fiscal year.

Rate adjustment

The total rate that Medicaid pays for nursing facility services is the sum of several components. Most of the components are based on costs that nursing facilities

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[174] R.C. 3793.11(K).

[175] R.C. 3793.11(D).

[176] R.C. 4759.01, 4759.03, 4759.05, 4759.06, and 4759.10.

[177] R.C. 4739.01.

incur in providing services to their residents (direct care costs, ancillary and support costs, tax costs, and capital costs). The Revised Code includes formulas required to be used in determining the Medicaid payment rates for each type of cost.

Current law provides for the Office of Medical Assistance to adjust, in a manner directed by the General Assembly through the enactment of law, Medicaid payment rates determined in accordance with the Revised Code formulas. The General Assembly, through the enactment of H.B. 153, requires the Office to adjust the rates for fiscal year 2013 by increasing, by 5.08%, the rates for each type of nursing facility cost. (In the case of direct care costs, the 5.08% increase is applied to nursing facilities' costs per case-mix units, which are a factor in determining their rates for direct care costs.) As an example of the increase, a nursing facility whose fiscal year 2013 per diem rate for ancillary and support costs is determined in accordance with the Revised Code formula to be $50 is instead paid $52.54 per diem for those costs for that year. ($50 increased by 5.08% is $52.54.)

Under the bill, the 5.08% rate adjustment for each type of nursing facility cost is to continue for each fiscal year until the first rebasing occurs.[178] A rebasing is a redetermination of the rates for nursing facilities' different costs (or, in the case of direct care costs, their costs per case-mix units) using information from Medicaid costs reports for a calendar year that is later than the calendar year used for the previous determination of the rates or costs per case-mix units. Continuing law provides that the Office of Medical Assistance is not required to conduct a rebasing more than once every ten years.

The bill repeals the law that requires the Office of Medical Assistance to adjust, in a manner directed by the General Assembly through the enactment of law, Medicaid payment rates determined in accordance with the Revised Code formulas.[179] This is because the bill makes the adjustment part of the Revised Code formulas.

Low resource utilization residents

H.B. 153 established an exception to the Medicaid payment rate adjustment discussed above. A nursing facility is paid $130 per Medicaid day for services provided to low resource utilization residents during fiscal year 2013 instead of the adjusted rate. A low resource utilization resident is a Medicaid recipient residing in a nursing facility who, for purposes of calculating the nursing facility's Medicaid payment rate for direct care costs, is placed in either of the two lowest resource utilization groups, excluding

[178] R.C. 5111.231, 5111.24, 5111.242, 5111.246, and 5111.25.

[179] R.C. 5111.222.

any resource utilization group that is a default group used for residents with incomplete assessment data.

The bill provides for the $130 per Medicaid day rate to continue indefinitely for nursing facility services provided to low resource utilization residents.[180] Unlike the continuation of the rate adjustments discussed above, this rate for low resource utilization rates continues beyond the first rebasings.

Payment rates for skilled nursing facility services under the ICDS

The Medical Assistance Director is permitted by current law to implement, after receiving federal approval, a demonstration project to test and evaluate the integration of the care that individuals eligible for Medicare and Medicaid (dual eligible individuals) receive under those programs.[181] The demonstration project has been named the Integrated Care Delivery System (ICDS). The Medical Assistance Director submitted an ICDS proposal to the United States Centers for Medicare and Medicaid Services in April of 2012. The proposal calls for contracting with managed care organizations (MCOs) to manage benefits available to dual eligible individuals participating in the ICDS, including skilled nursing facility services covered by Medicare.

The bill requires an MCO, under certain circumstances, to pay a skilled nursing facility at least the current Medicare fee-for-service rate, without deduction for coinsurance, for Medicare-covered skilled nursing facility services provided to a dual eligible individual. The current Medicare fee-for-service rate is the fee-for-service rate in effect for a Medicare-covered skilled nursing facility service at the time the service is provided. The current Medicare fee-for-service rate must be paid if all of the following apply:

(1) The MCO is responsible for the payment under the terms of a contract that the MCO, Medical Assistance Director, and United States Secretary of Health and Human Services jointly enter into under the ICDS;

(2) The U.S. Secretary agrees to the payment rate as part of the contract;

(3) The MCO receives a federal capitation payment that is an actuarially sufficient amount for the costs that the MCO incurs in paying the rate;

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[180] R.C. 5111.222.

[181] R.C. 5111.981.

(4) No state funds are used for any part of the costs that the MCO incurs in paying the rate;

(5) The ICDS provides for dual eligible individuals to receive the services as part of the ICDS.[182]

OHIO DEPARTMENT OF DEVELOPMENTAL DISABILITIES

ICF/IID resident assessments

The bill permits the Ohio Department of Developmental Disabilities (ODODD) to conduct or contract with another entity to conduct, for the first quarter of calendar year 2013, assessments of all residents of each intermediate care facility for individuals with intellectual disabilities (ICF/IID), regardless of payment source, who are in the ICF/IID, or on hospital or therapeutic leave from the ICF/IID, on the day or days that the assessments are conducted at the ICF/IID.[183] Until recently, ICFs/IID were called intermediate care facilities for the mentally retarded (ICFs/MR). Resident assessments are used in determining ICFs/IID's case-mix scores, which are a factor in calculating their Medicaid rates for direct care costs.

Current law requires ICF/IID providers, rather than ODODD, to conduct the resident assessments each quarter. The bill requires ODODD, if it chooses to conduct or contract with another entity to conduct the assessments for the first quarter of calendar year 2013, to notify each ICF/IID provider that the provider is permitted but not required to conduct assessments for that quarter. A provider's assessments for that quarter would be in addition to ODODD's assessments for that quarter. No provider is to be treated as having failed, for that quarter, to timely submit data obtained from assessments if ODODD conducts or contracts with another entity to conduct the assessments for that quarter.

The bill requires ODODD to take a number of actions if it conducts or contracts with another entity to conduct resident assessments for the first quarter of fiscal year 2013. The required actions are discussed below.

Use of inter-rater reliable process

In conducting the assessments, ODODD must provide for a resident assessment instrument prescribed in rules to be used in accordance with an inter-rater reliable process. The bill does not specify the meaning of an inter-rater reliable process.

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[182] R.C. 5111.982.

[183] Section 11.

Qualified intellectual disability professionals

ODODD must provide for the assessments to be performed by individuals who meet the requirements to be qualified intellectual disability professionals as specified in federal regulations. To meet the qualifications, an individual must (1) have at least one year of experience working directly with persons with intellectual disabilities or other developmental disabilities and (2) be a doctor of medicine or osteopathy or a registered nurse or hold at least a bachelor's degree in certain professional categories such as social work, occupational therapy, and physical therapy.[184]

Determination of case-mix scores

ODODD is required to use the data obtained from the resident assessments to determine each ICF/IID's case-mix score for the first quarter of calendar year 2013.

Determination of FY 2014 Medicaid rates for direct care costs

The lesser of an ICF/IID's individual cost per case-mix unit or the maximum cost per case-mix unit of its peer group is used in determining its Medicaid rate for direct care costs. A cost per case-mix unit is based on the average of an ICF/IID's four quarterly case-mix scores for a calendar year.

Under current law, ICFs/IID's average case-mix scores for the four quarters of calendar year 2012 are to be used to calculate the cost per case-mix units when determining fiscal year 2014 Medicaid rates for direct care costs. The bill provides instead for ICFs/IID's case-mix scores for the first quarter of calendar year 2013 (the scores based on the resident assessments ODODD conducts or contracts with another entity to conduct) to be used to calculate the individual and peer group maximum cost per case-mix units when determining the fiscal year 2014 Medicaid rates.

ICFs/IID are to have one Medicaid rate for direct care costs for all of fiscal year 2014 instead of four different rates for each quarter. Each ICF/IID's single rate is to be determined as follows:

(1) Multiply the ICF/IID's case mix score for the first quarter of calendar year 2013 by the lesser of its individual or peer group maximum cost per case-mix unit determined as discussed above;

(2) Adjust the product determined under step (1) by an inflation rate estimated in accordance with continuing law.

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[184] 42 C.F.R. 483.430.

Determination of FY 2015 Medicaid rates for direct care costs

An ICF/IID's average case-mix score for calendar year 2013 is to be a factor in determining its fiscal year 2015 Medicaid rate for direct care costs. For the purpose of determining the rate, ODODD is to use the following when determining an ICF/IID's average case-mix score for calendar year 2013:

(1) For the first quarter of calendar year 2013, the ICF/IID's case-mix score determined using the data from the resident assessments ODODD conducts or contracts with another entity to conduct;

(2) For the last three quarters of calendar year 2013, the ICF/IID's case-mix scores determined in accordance with continuing law (i.e., case-mix scores that are either determined using data from resident assessments the ICF/IID conducts or assigned to the ICF/IID).

ICFs/IID to receive resident assessment results

After the assessments of all of an ICF/IID's residents are completed but not later than April 30, 2013, ODODD must provide, or have the entity (if any) with which it contracts to conduct the assessments provide, the results of the assessments to the ICF/IID provider.

Reconsiderations

ODODD is required to conduct a reconsideration for any ICF/IID provider who submits a written request for the reconsideration to ODODD not later than 15 days after the provider receives the resident assessments' results. The request must include (1) a detailed explanation of the items in the results that the provider disputes, (2) copies of relevant supporting documentation from specific resident records, and (3) the provider's proposed resolution of the disputes.

When conducting a reconsideration, ODODD is to consider (1) the historic results of resident assessments performed by the provider, (2) all the materials the provider includes in the request, and (3) all other matters ODODD determines necessary for consideration. ODODD must issue a written decision not later than the sooner of (1) 30 days after ODODD receives the reconsideration request or (2) June 1, 2013. ODODD's decision is final and not subject to further appeal.

Limit on Medicaid rate reductions

The bill limits Medicaid rate reductions that may occur as a result of the case-mix scores determined using the resident assessments conducted by ODODD or entity (if any) with which ODODD contracts. No case-mix score for the first quarter of calendar

year 2013 is to cause an ICF/IID's fiscal year 2014 Medicaid rate for direct care costs to be less than 90% of its June 30, 2013, Medicaid rate for direct care costs.

VOLUNTEER BEHAVIORAL HEALTH CARE PROFESSIONALS

Qualified immunity from civil liability for volunteer services

The bill expands the list of persons who are "health care professionals" for purposes of the current law provision specifying that a health care professional who is a volunteer is generally not liable in civil damages for any injury, death, or loss to person or property that arises from an action or omission of the health care professional in the provision of health care services to an indigent or uninsured person. (The immunity does not apply if the health care professional's action or omission constitutes willful or wanton misconduct.)[185]

Currently, the immunity provision defines a "health care professional" as any of the following who provides medical, dental, or other health-related diagnosis, care, or treatment and is licensed, certified, or otherwise authorized to practice under the relevant laws: a physician, registered nurse, licensed practical nurse, physician assistant, dentist, dental hygienist, physical therapist, physical therapist assistant, occupational therapist, occupational therapy assistant, chiropractor, optometrist, podiatrist, dietitian, pharmacist, emergency medical technician, respiratory care professional, speech-language pathologist, or audiologist. The bill expands this list to include professional clinical counselors, professional counselors, independent social workers, social workers, independent marriage and family therapists, marriage and family therapists, psychologists, independent chemical dependency counselors, chemical dependency counselors III, chemical dependency counselors II, and chemical dependency counselors I.[186]

EMERGENCY CLAUSE AND DELAYED EFFECTIVE DATES

The bill declares that it is an emergency measure necessary for the immediate preservation of the peace, health, and safety.[187] Therefore, it is not subject to the referendum under article II, section 1d of the Ohio Constitution.

The bill specifies that all of its provisions except for those pertaining to methadone treatment programs and nursing facilities' Medicaid rates go into effect 90

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[185] R.C. 2305.234(B)(1).

[186] R.C. 2305.234(A)(5).

[187] Section 9.

days after the bill's effective date.[188] The codified and uncodified provisions pertaining to methadone treatment programs are to take effect at the earliest time permitted by law pursuant to the bill's emergency clause,[189] while the codified provisions pertaining to nursing facilities' Medicaid rates take effect July 1, 2013.[190]

The uncodified provisions pertaining to instruction on schedule II controlled substances for certain APRNs seeking a certificate to prescribe and assessments of residents of intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) take effect at the earliest time permitted by law pursuant to the bill's emergency clause.[191]

HISTORY

ACTION	DATE
Introduced	07-26-11
Reported, H. Health & Aging	04-18-12
Passed House (95-0)	05-15-12
Reported, S. Health, Human Services & Aging	---
Rereported, S. Rules & Reference	---

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[188] Section 5.

[189] Section 5, division (A), and Section 14.

[190] Section 5, division (B).

[191] Section 14.